

Message Text

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PASS STR FOR POMERANZ

E.O. 11652: N/A

TAGS: ETRD, OECD

SUBJECT: GOVERNMENT PURCHASING: NOTE RESPONDING TO
GATT REQUEST

FOLLOWING IS TEXT OF NOTE DRAFTED BY SECRETARIAT TO
RESPOND TO REQUEST BY GATT SECRETARIAT FOR INFORMATION
ON OECD WORK ON GOVERNMENT PURCHASING. COMMENTS ARE
REQUESTED BEFORE JUNE 6.

BEGIN TEXT:

1. THE TRADE COMMITTEE OF OECD HAS BEEN CONCERNED FOR
SOME YEARS WITH THE QUESTION OF GOVERNMENT PURCHASING.
ORIGINALLY, ITS WORK CONSISTED OF A FAR-REACHING SURVEY
OF THE REGULATIONS, PROCEDURES AND PRACTICES IN MEMBER
COUNTRIES, WITH PARTICULAR REGARD TO THE TREATMENT
GRANTED TO FOREIGN PRODUCTS AND SUPPLIERS. BECAUSE OF
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THE INTEREST ATTACHED TO THIS INFORMATION AS CONCERNS

BOTH GOVERNMENTS AND TRADE CIRCLES, IT WAS PUBLISHED IN 1966 (SEE THE BOOKLET ENTITLED: "GOVERNMENT PURCHASING REGULATIONS AND PROCEDURES IN EUROPE, NORTH AMERICA AND JAPAN"). THE INFORMATION EXERCISE HAS CONTINUED SINCE THEN, AND A REVISED AND FULLER EDITION OF THE ABOVE BOOKLET, COVERING ALL PRESENT OECD MEMBER COUNTRIES, IS NOW BEING PREPARED AND SHOULD COME OUT AT THE END OF THIS YEAR.

2. THE REVIEW OF GOVERNMENT PURCHASING POLICIES AND PRACTICES WAS SOON FOLLOWED BY FURTHER WORK, WITH THE AIM OF MAKING STATE CONTRACTS MORE OPEN TO INTERNATIONAL COMPETITION AND OF ENSURING MAXIMUM FAIRNESS IN THIS RESPECT. TO THIS END, THE WORK WAS AIMED AT ELABORATING A SOLUTION ON THE BASIS OF WHICH THE PRINCIPLE OF NON-DISCRIMINATION COULD BE ESTABLISHED ON A MULTILATERAL BASIS, BY MAKING PROVISION FOR BOTH THE POLICIES AND THE PRACTICES TO BE EMPLOYED IN ORDER TO ENSURE RESPECT FOR THIS PRINCIPLE. THE TRADE COMMITTEE INSTRUCTED ITS WORKING PARTY TO ENDEAVOR, ON AN EXPLORATORY BASIS, TO PREPARE THE BASES FOR SUCH A SOLUTION. AT EARLIER MEETINGS OF THE GATT, INFORMATION WAS SUPPLIED CONCERNING CURRENT WORK, THE PROBLEMS RAISED AND DIRECTIONS IN WHICH POSSIBLE SOLUTIONS WERE BEING LOOKED FOR. MORE RECENTLY, IT BECAME POSSIBLE TO BEGIN DRAWING UP A COMPREHENSIVE DRAFT INSTRUMENT.

3. THE DRAFT WAS PREPARED IN THE FORM OF CONTRACTUAL OBLIGATIONS, THOUGH NEITHER ITS FORM NOR ANY OF ITS PROVISIONS IMPLY ANY GOVERNMENT COMMITMENT. A CERTAIN NUMBER OF ITS PROVISIONS WOULD STILL HAVE TO BE DRAFTED OR COMPLETED.

4. THIS INSTRUMENT CONCERNS GOVERNMENT PURCHASES OF SUPPLIES (THOUGH SOME SERVICES INCIDENTAL TO THE SUPPLIES CAN BE INCLUDED). THE "PROVISIONS OF SUBSTANCE" IN THE DRAFT ARE COLLECTIVELY AIMED AT ELIMINATING DISCRIMINATION IN PURCHASING POLICIES AND PRACTICES. BECAUSE DISCRIMINATION CAN TAKE TWO FORMS (EITHER "FORMAL", I.E. INCLUDED IN THE TEXTS, DIRECTIVES, ETC., OR UNCLASSIFIED

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"HIDDEN", I.E. PRACTICES DURING THE DIFFERENT STAGES OF PURCHASING), IT WAS NECESSARY TO ESTABLISH A CERTAIN BALANCE BETWEEN THE PROVISIONS DESIGNED TO ABOLISH FORMAL DISCRIMINATION AND THE PROVISIONS CONCERNED WITH PURCHASING PROCEDURES, BY MAKING THE LATTER SUBJECT TO FAIRLY SPECIFIC GUARANTEES, THOUGH WITHOUT GOING AS FAR AS COMPLETE HARMONIZATION OF NATIONAL PRACTICES. THE FACT THAT PROVISIONS ARE EXPECTED TO BE MADE BINDING

IS DUE, IN THIS RESPECT, TO THE NEED FOR EFFECTIVE
GUARANTEES CONCERNING RECIPROCITY.

5. BESIDES THE PRINCIPLE OF NON-DISCRIMINATION IN
GOVERNMENT PURCHASING REGULATIONS, PROCEDURES AND
PRACTICES, THE FOLLOWING PROVISIONS WOULD AIM, IN
CONNECTION WITH NATIONAL PURCHASING PROCEDURES, TO
GUARANTEE THAT FOREIGN SUPPLIERS AND PRODUCTS HAVE FAIR
ACCESS TO CONTRACTS INTERESTING INTERNATIONAL COMPETI-
TION.

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6. PURCHASING INTENTIONS WOULD BE GIVEN A LARGE MEA-
SURE OF EX ANTE PUBLICITY, AND THIS WOULD APPLY BOTH TO
PROCEDURES ALLOWING ALL SUPPLIERS TO PARTICIPATE ("OPEN"
PROCEDURES), AND TO THOSE PERMITTING SOME SELECTION

AMONG COMPETITORS EFFECTIVELY ALLOWED TO PARTICIPATE ("SELECTIVE" PROCEDURES). SUPPLIERS WOULD RECEIVE COMPREHENSIVE AND IMPARTIAL INFORMATION, PARTICULARLY BY WAY OF THE DOCUMENTATION ON EACH PROPOSED CONTRACT. THE TIME-LIMITS ALLOWED FOR AT THE VARIOUS PROCEDURAL STATES WOULD BE OF EQUITABLE AND ADEQUATE DURATION. THE CRITERIA USED IN EVALUATING BIDS WOULD BE OBJECTIVE AND SPECIFIED IN ADVANCE. GIVEN THE PROCEDURAL CONSTRAINTS THAT THESE DIFFERENT GUARANTEES WOULD INVOLVE, AN EXHAUSTIVE LIST, SOME ASPECTS OF WHICH ARE STILL BEING DISCUSSED, WOULD SPECIFY THOSE CASES OR CIRCUMSTANCES IN WHICH PURCHASING ENTITIES COULD USE MORE UNCLASSIFIED

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FLEXIBLE PROCEDURES WITHOUT HAVING TO RESPECT ALL THE FORMAL PROVISIONS, THOUGH THEY WOULD CONTINUE TO BE BOUND BY THE PRINCIPLE OF NON-DISCRIMINATION AND CERTAIN MEASURES OF CONTROL.

7. OTHER ESSENTIAL PROVISIONS RELATE TO THE PROHIBITION OF DISCRIMINATION IN THE FORM EITHER OF PRODUCT SPECIFICATIONS, OR OF QUALIFYING CONDITIONS FOR SUPPLIERS AND THE GUARANTEES DEMANDED OF THEM. LASTLY, WITHIN THE CONTEXT OF THE PURCHASING PROCESS, SUPPLIERS WOULD BE GIVEN CERTAIN MEANS OF INFORMATION (ONE QUESTION IN THIS RESPECT BEING THE AMOUNT OF INFORMATION NEEDED FOR BOTH COMPETITION AND THE INSTRUMENT TO FUNCTION CORRECTLY). SUPPLIERS COULD HAVE CONTACTS WITH THE PURCHASING ENTITY, AND COULD HAVE ACCESS TO NATIONAL PROCEDURES FOR HEARING AND CONSIDERING COMPLAINTS IN RESPECT OF GOVERNMENT PURCHASING.

8. THE ABOVE PROVISIONS APPLY, VIA GOVERNMENTS, TO PUBLIC SECTOR PURCHASING ENTITIES. IT SHOULD BE NOTED THAT ONE QUESTION MAY ARISE IN THIS CONNECTION OWING TO THE CONSTITUTIONAL DIFFERENCES BETWEEN COUNTRIES (CENTRALIZED OR FEDERAL STATES) AND DIFFERENT ADMINISTRATIVE AND ECONOMIC STRUCTURES (IN PARTICULAR THE VARYING SHARE OF THE ECONOMY UNDER STATE CONTROL). FOR REASONS OF RECIPROCITY, THE DIRECT OBLIGATIONS UNDERWRITTEN BY GOVERNMENTS IN RESPECT OF PURCHASING ENTITIES OVER WHICH THEY HAVE AUTHORITY, COULD BE SUPPLEMENTED BY AN UNDERTAKING TO USE ALL REASONABLE MEANS WITHIN THEIR POWER TO ENCOURAGE OTHER PUBLIC SECTOR ENTITIES TO APPLY THE INSTRUMENT.

9. IT IS INTENDED THAT CERTAIN EXCEPTIONS WOULD BE PROVIDED FOR IN THE INSTRUMENT. THESE CONCERN PROBLEMS WHICH ARE KNOWN ABOUT IN CONNECTION WITH INTERNATIONAL COMMITMENTS, BUT WHICH CAN HAVE A SPECIAL IMPACT ON

GOVERNMENT PURCHASING (FOR EXAMPLE, PURCHASING OF ARMS AND AMMUNITION FOR NATIONAL DEFENSE PURPOSES), OTHER EXCEPTIONS WOULD CONCERN MATTERS SPECIFIC TO GOVERNMENT PURCHASING, SUCH AS PURCHASES UNDER THE HEADING OF TIED AID TO DEVELOPING COUNTRIES--AT LEAST FOR AS LONG AS AID UNCLASSIFIED

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TYING CONTINUES.

10. THE PROVISIONS DESIGNED TO ENSURE THE SURVEILLANCE OF THE INSTRUMENT AT GOVERNMENT LEVEL CONSTITUTE THE SECOND ESSENTIAL ASPECT OF THE DRAFT. IT IS UNDERSTOOD THAT A COMMITTEE COMPOSED OF THE SIGNATORY COUNTRIES WOULD HAVE A MAJOR ROLE IN THIS RESPECT. TWO TYPES OF FUNCTION CAN BE DISTINGUISHED UNDER THIS HEADING.

11. THESE INCLUDE, IN THE FIRST PLACE, THE PERMANENT SURVEILLANCE AND PERIODIC REVIEWS WHICH THE COMMITTEE WOULD UNDERTAKE IN THE CONTEXT OF THE IMPLEMENTATION OF THE INSTRUMENT. THEY ALSO INCLUDE THE PROCEDURE FOR SETTLING DIFFERENCES WHICH WILL IN FACT HAVE TO GUARANTEE THAT COMMITMENTS ARE EFFECTIVELY RESPECTED. THE INTENTION IS, HOWEVER, TO ENSURE, BY A SYSTEM OF SUCCESSIVE SCREENS, (THE FIRST OF WHICH CONSISTS OF THE CONTACTS ESTABLISHED BETWEEN THE SUPPLIERS AND THE PURCHASING ENTITIES THEMSELVES) THAT DIFFERENCES CAN BE SOLVED AT THE LOWEST LEVEL AND DO NOT NORMALLY LEAD TO INTERNATIONAL DISPUTE. IF BILATERAL CONSULTATIONS, WHICH ARE GIVEN AN IMPORTANT ROLE IN THIS CONTEXT, SHOULD FAIL AND THE DIFFICULTIES BECOME REALLY SERIOUS, THE PARTIES CONCERNED COULD LAUNCH AN APPEAL AT MULTILATERAL LEVEL VIA THE COMMITTEE OF SIGNATORY COUNTRIES. END TEXT. TURNER

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